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Measures to eliminate international terrorism

Measures to eliminate international terrorism

Report of the Working Group

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I. Introduction

1. The General Assembly, in its resolution 58/81 of 9 December 2003, decided that the Ad Hoc Committee established by Assembly resolution 51/210 of 17 December 1996 should meet from 28 June to 2 July 2004 to continue the elaboration of a draft comprehensive convention on international terrorism, with appropriate time allocated to the continued consideration of outstanding issues relating to the elaboration of a draft international convention for the suppression of acts of nuclear terrorism, and that it should keep on its agenda the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations. The Assembly also decided that the work should continue, if necessary, during the fifty-ninth session of the Assembly, within the framework of a working group of the Sixth Committee. At its 32nd meeting, on 2 July 2004, the Ad Hoc Committee decided to recommend that the Sixth Committee, at the fifty-ninth session of the General Assembly, consider establishing such a working group, if appropriate.[1]

2. At its 1st meeting, on 4 October 2004, the Sixth Committee established a Working Group and elected Rohan Perera (Sri Lanka) as its Chairman. At the same meeting, the Committee decided to open the Working Group to all States Members of the United Nations or members of the specialized agencies or of the International Atomic Energy Agency (IAEA). At the same meeting, the Working Group noted the intention of the League of Arab States to participate in the discussions as an observer.

3. The Working Group held two plenary meetings, on 5 and 8 October 2004. At its 1st meeting, in keeping with the established practice, the Working Group decided that the members of the Bureau of the Ad Hoc Committee elected at the latter's eighth session would continue to act as Friends of the Chairman during the meetings of the Working Group. The Chairman informed the Working Group that one Bureau member, Michael Bliss (Australia), was no longer available to serve in that capacity. The Working Group paid tribute to Mr. Bliss for his valuable contribution to its work. In order to ensure the representation of all regional groups, the Working Group decided to invite Ben Playle (Australia) to join the Friends of the Chairman.

4. The Working Group had before it the reports of the Ad Hoc Committee on its sixth,[2] seventh[3] and eighth[1] sessions as well as the reports of the Working Group of the Sixth Committee convened during the fifty-third[4] and the fifty-fifth to fifty-eighth[5] sessions of the General Assembly.

5. Annex I to the present report contains reports of the Coordinators on the results of the informal consultations. These reports are included in accordance with the established practice for reference purposes only and not as a record of the discussions.

II. Proceedings of the Working Group

6. At its 1st meeting, on 5 October, the Working Group adopted its work programme and decided to proceed with discussions in informal consultations. The Chairman reappointed Carlos Fernando Díaz Paniagua (Costa Rica) as the Coordinator for the draft comprehensive convention on international terrorism and

Albert Hoffmann (South Africa) as the Coordinator for the draft international convention for the suppression of acts of nuclear terrorism. The Chairman also invited interested delegations to approach him on the question of convening a high-level conference under the auspices of the United Nations to formulate a joint organized response of the international community to terrorism in all its forms and manifestations.

7. The informal consultations regarding the draft comprehensive convention, coordinated by Mr. Díaz Paniagua, were held on 5 October. The informal consultation on the outstanding issues pertaining to the draft international convention for the suppression of acts of nuclear terrorism, coordinated by Mr. Hoffmann, were held on 6 October. Both coordinators also held informal bilateral consultations with interested delegations on 5, 6 and 7 October.

8. At the 2nd meeting of the Working Group, on 8 October, the Coordinators presented their oral reports on the results of the informal consultations; these reports are contained in annex I below for reference purposes only and not as a record of the discussions. The Chairman also informed the Working Group that in his contacts with several delegations on the question of convening a high-level conference, they had informed him that consultations on this question were continuing at a political level in their capitals. They had reiterated the wish that the item be kept on the agenda in accordance with General Assembly resolution 58/81.

9. The Working Group considered and adopted its report at its 2nd meeting, on 8 October.

III. Recommendations and conclusions

10. At its 2nd meeting, on 8 October 2004, the Working Group decided to refer the present report to the Sixth Committee for its consideration, together with the report of the Ad Hoc Committee established by General Assembly resolution 51/210 at its eighth session. The Working Group also decided, bearing in mind General Assembly resolution 58/81, to recommend that work continue with the aim of finalizing the text of a draft comprehensive convention on international terrorism and the text of a draft international convention for the suppression of acts of nuclear terrorism, building upon the work already accomplished.

Notes

[1] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 37* (A/59/37).

[2] Ibid., *Fifty-seventh Session, Supplement No. 37* (A/57/37 and Corr.1).

[3] Ibid., *Fifty-eighth Session, Supplement No. 37* (A/58/37).

[4] A/C.6/53/L.4.

[5] A/C.6/55/L.2, A/C.6/56/L.9, A/C.6/57/L.9 and A/C.6/58/L.10.

Annex

Reports of the Coordinators on the results of the informal consultations

A. Draft comprehensive convention on international terrorism

1. On 5 October 2004, in my capacity as Coordinator, I conducted informal consultations on the draft comprehensive convention on international terrorism. The consultations were open to all delegations. I also had bilateral contacts with interested delegations on 5, 6 and 7 October. The consultations focused on article 18 of the draft convention. Comments were also made in respect of article 2 *bis* and article 2.

2. The basic reference texts for article 18 were the text circulated by the former coordinator and the text proposed by member States of the Organization of the Islamic Conference (OIC). Those texts appear in annex IV to the report of the Ad Hoc Committee on its sixth session.[a] The basic reference texts for article 2 *bis* and article 2 were the informal texts prepared by the former coordinator. Those texts appear in annex II to the same report.

3. It should also be recalled that the discussion paper of the preamble and article 1 of the draft convention, prepared by the Bureau, as well as texts of articles 3 to 17 *bis* and 20 to 27 of the draft comprehensive convention, prepared by the Friends of the Chairman are found, respectively, in annexes I and III to the same report.

Article 18

4. Finding an agreement on article 18 remains key for reaching overall agreement on the draft comprehensive convention. Although differences on the text circulated by the former Coordinator and the text proposed by member States of OIC remain, the Coordinator was most encouraged by a renewed willingness to provide fresh impetus to the negotiations.

5. While some delegations still prefer the text circulated by the former Coordinator and other delegations still prefer the OIC proposal, there was a clear readiness to consider other alternatives which may help to overcome the present impasse.

6. No specific proposals were made during the consultations in respect of article 18. However, some delegations sought clarifications in respect of the meaning of certain terms employed in the OIC proposal, such as "parties" and "foreign occupation", particularly in the context of international humanitarian law. It was noted that under international humanitarian law the term "parties" was a term which refers to groups participating in an armed conflict. Some delegations expressed the view that the OIC proposal sought to preserve the rights of individuals other than armed forces under international humanitarian law. Thus, a civilian who forfeited his or her protection under international humanitarian law would not necessarily be considered as a terrorist under the draft convention.

7. The view was expressed that the central role of the General Assembly in the elaboration of instruments against terrorism must be stressed, even though other principal organs of the Organization were seized of questions concerning terrorism.

Article 2 *bis*

8. With regard to article 2 *bis*, some delegations favoured its deletion. In that connection, some considered it unnecessary since the law of treaties would govern any relationship between the draft comprehensive convention and other sectoral conventions against terrorism. Moreover, others preferred that the draft convention, given its general character, prevail over sectoral conventions in the event of incompatibility. However, some other delegations indicated their flexibility, pointing out that their position depended on a satisfactory solution to articles 2 and 18.

9. In the bilateral consultations, some delegations expressed their preference for retaining article 2 *bis*, as currently drafted.

Other issues

10. The view was expressed that one possibility of facilitating a compromise on the draft convention would be to reconsider the formulation of article 2. The scope of article 2 could be narrowed, thus effectively making the draft comprehensive convention supplemental to the 12 existing global conventions.

Concluding remarks

11. Even though agreement on the main outstanding issues has yet to be found, I was encouraged by the atmosphere of renewed interest to consider fresh proposals and alternative solutions. The coming weeks and the intersessional period offer an opportunity to think through the proposals and to generate new formulations. I believe we can seize this moment of renewed optimism and positive spirit to harness our efforts and finally reach agreement on the outstanding issues. I encourage all delegations to continue consultations among themselves. As Coordinator, I am at their disposal and ready to assist in those endeavours. I am also most thankful to all delegations which participated in the consultations as well as to the Secretariat for its effectiveness.

B. Draft international convention for the suppression of acts of nuclear terrorism

12. I wish to report to you and to the Working Group of the Sixth Committee on measures to eliminate international terrorism, in my capacity as Coordinator, on the informal consultations I held on the draft international convention for the suppression of acts of nuclear terrorism. As Coordinator, I conducted informal consultations open to all delegations on 6 October 2004, from 10 a.m. to 1 p.m. I also held informal bilateral contacts with some delegations in the afternoon of the same day.

13. As in previous sessions of the Working Group and the Ad Hoc Committee, consultations focused on the outstanding issues relating to the draft convention and on ways to resolve the differences that exist. The consultations were held in a cordial and constructive atmosphere, and delegations expressed willingness to show flexibility.

14. The informal consultations focused on the text of the draft international convention for the suppression of acts of nuclear terrorism, as contained in annex III

to the report of the Ad Hoc Committee on its eighth sesion.[b] As you recall, this document was prepared by the Bureau of the Ad Hoc Committee in order to facilitate the negotiations on the matter. It is mainly a reproduction of the draft text prepared by the Friends of the Chairman of the Working Group of the Sixth Committee in 1998, incorporating, in paragraph 4 of article 4, the proposal submitted by Mexico, on the understanding that all other proposals concerning the draft convention remain on the table for further consideration.

15. In the course of the consultations, several delegations indicated that after six years of negotiations on the draft international convention for the suppression of acts of nuclear terrorism the time had come for its finalization, that the text as contained in annex III to the report of the Ad Hoc Committee on its eighth session was acceptable, and that it should be submitted to the Sixth Committee for its consideration with a view to its final approval by the General Assembly. In that regard, it was emphasized that, with the addition of the Mexican proposal as paragraph 4 of article 4, the main concern of a number of delegations had been addressed and that they could accept the text as it appeared in annex III to the report. However, other delegations reiterated their positions that paragraphs 2 and 3 of article 4 of the draft text remained problematic and should be deleted.

16. In response to a question concerning the exclusion of the activities of armed forces from the scope of the convention, it was clarified that the draft convention was not intended to apply in war time and that it would not provide immunity to the personnel of armed forces nor would it condone impunity. Instead, the draft stipulated that the activities of military forces were subject to a different body of law, including the law of State responsibility and international humanitarian law.

17. Some delegations, while reiterating their concern over the current wording of article 4, referred to the negative language in which the Arabic version had been drafted. It was suggested, in that regard, that the wording of article 4 should be further improved. Conversely, it was stated that the wording of this article had been taken from the texts of existing conventions on the suppression of international terrorism and that consistency among the international instruments on this topic needed to be maintained.

18. Considering the willingness of delegations to make another attempt to resolve the pending issues, the meeting was suspended for one hour to allow interested delegations to consult among themselves with a view to improving the language in article 4. However, no text was submitted to the meeting since the delegations concerned indicated that they needed more time to prepare a proposal that would address their concerns.

19. One delegation expressed its willingness to take the initiative of consulting with other delegations, including with the member States of OIC, with a view to proposing some changes to draft article 4 in an attempt to narrow existing differences. That delegation indicated that it would make an attempt to come up with a proposal that could be considered on 18 and 19 October, when the Sixth Committee was expected to take up agenda item 148, "Measures to eliminate international terrorism". As Coordinator, I wish to express my gratitude to that delegation for its efforts in that regard.

20. One delegation reiterated the proposal it had made during the last session of the Ad Hoc Committee, namely, to amend paragraph 4 of article 4 by adding the

words "possession or" after the words "legality of the" in the second line of that paragraph. No discussion was held on that matter.

21. The only other outstanding issue relates to the proposal concerning the inclusion of dumping of radioactive waste, which was raised again in consultations. No discussion was held on that proposal.

22. In conclusion, I wish to reiterate, as Coordinator, that the divergence of views on article 4 of the draft convention that still exist are not irreconcilable and that we should build on the progress achieved thus far, bearing in mind our common objective of adopting the convention to suppress acts of nuclear terrorism. Therefore, I wish to encourage delegations, in particular those who still have difficulty with the current text of article 4, to intensify their efforts and to continue to consult among themselves in the short time left until the consideration of agenda item 148 by the Sixth Committee. I believe that the Sixth Committee should continue to play its important role in standard setting in international relations. By finalizing the draft international convention on the suppression of acts of nuclear terrorism, the Committee would make a substantive contribution towards strengthening the international legal framework for the suppression and combating of international terrorism.

23. Finally, I wish to thank delegations for expressing their views and for making proposals and suggestions both during the informal consultations and in the informal bilateral contacts. I believe that these efforts have proved to be useful and I am grateful to all delegations for their support and the spirit of cooperation and flexibility expressed during our consultations.

Notes

[a] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* (A/57/37).

[b] Ibid., *Fifty-ninth Session, Supplement No. 37* (A/59/37).